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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JOEL FAUCETTA, Plaintiff and Appellant, v. RED PLANET RANCH, INC., Defendant and Respondent.	D039856 (Super. Ct. No. GIC768106)

APPEAL from a judgment of the Superior Court of San Diego County, Kevin A. Enright, Judge. Affirmed.

Plaintiff Joel Faucetta appeals from a summary judgment granted in favor of the defense in his action seeking unjust enrichment restitution, arising out of the sale of certain real property, owned by defendant Red Planet Ranch (Red Planet). (Code Civ. Proc., § 437c.) Faucetta formerly held an option to buy the property, which he intended to subdivide and develop. However, after exercising his option, he was unable to complete the purchase transaction, and the property was sold to others. The trial court

found that Faucetta's conduct during the period of the option, i.e., obtaining rezoning of the property and acquiring a tentative subdivision map, was voluntary and any benefit conferred on Red Planet incidental. The trial court found that no relief was available in restitution.

Faucetta contends on appeal that the trial court erred in granting summary judgment, claiming that as a matter of law, a defaulting purchaser should be entitled to unjust enrichment restitution for expenses incurred in processing the subdivision and zoning of the prospective seller's property during the effective period of an option contract. However, neither the undisputed facts nor the law will support such a theory, and we affirm the defense judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1995, Faucetta and Red Planet entered into an Option Agreement (Option) in which Red Planet granted the exclusive right to purchase real property to Faucetta. The Option also contained provisions for its extension. During the period that the Option was in effect, Faucetta pursued both the rezoning of the property and tentative subdivision mapping, for purposes of developing the property. In 1997, the property was, in fact, rezoned by the County of San Diego to increase density for development, and a tentative subdivision map for the property was obtained through Faucetta's efforts.

In June 1997, Red Planet and Faucetta entered into a modification to the Option Agreement (Modification). The Modification again provided an extension of the Option period and acknowledged that the process of property development had been difficult.

In July 1998, Faucetta exercised his modified Option on the Red Planet property, and the parties entered into a contract for sale of the property (Purchase Contract). The undisputed facts reveal that all improvements forming the basis for Faucetta's restitution claim were made during the period of the Option, from 1995 to 1997, and not during the period of the subsequent Purchase Contract.

However, in October 1998, escrow was cancelled, and Faucetta never purchased the property. In 2001, the Red Planet property was purchased by a third party (G.D.G., Inc., not a party to this action). Certain recitals in the documents formalizing the sale indicated that the third party purchaser expected to receive the benefit of the rezoning and the tentative subdivision map for its own purposes of development.

In May 2001, Faucetta filed a complaint for damages for unjust enrichment against Red Planet. Faucetta alleged that Red Planet unjustly benefited from Faucetta's efforts and expenses, made during the period of his Option, to improve the property through rezoning and obtaining tentative subdivision map approval.

After answering, Red Planet moved for summary judgment, claiming that (1) any alleged acts of enrichment took place during the period of the Option and not pursuant to the Purchase Contract, thereby making Faucetta a volunteer and preventing any restitution award; (2) the Purchase Contract expressly barred the unjust enrichment claim or any other claim arising out of the sale of the property by virtue of a release and "hold harmless" provision; and (3) the Purchase Contract expressly required that any improvements be made at Faucetta's expense.

The trial court granted summary judgment to Red Planet, ruling that Faucetta's efforts were voluntarily undertaken in the hopes of his own acquisition of the property, and any benefit conferred on Red Planet was incidental and insufficient to constitute a basis for equitable restitution. The other grounds of the motion were not addressed in the ruling. Faucetta timely appealed.

DISCUSSION

I

STANDARD OF REVIEW

Under Code of Civil Procedure section 437c, a motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Because the granting of a summary judgment motion "involves pure questions of law, we are required to reassess the legal significance and effect of the papers presented by the parties in connection with the motion." (*Ranchwood Communities Limited Partnership v. Jim Beat Construction Co.* (1996) 49 Cal.App.4th 1397, 1408.)

In evaluating the propriety of a grant of summary judgment our review is de novo, and we independently review the record before the trial court. (*Branco v. Kearny Moto Park, Inc.* (1995) 37 Cal.App.4th 184, 189.) In practical effect, we assume the role of a trial court and apply the same rules and standards that govern a trial court's determination of a motion for summary judgment. (*Lopez v. University Partners* (1997) 54 Cal.App.4th 1117, 1121-1122.)

Where the parties present nonconflicting evidence of written instruments, as here, we review the writings and the applicable questions of law de novo. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866.) In short, "[i]f a party moving for summary judgment in any action . . . would prevail at trial without submission of any issue of material fact to a trier of fact for determination, then he should prevail on summary judgment." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.)

II

RESTITUTION UNDER AN OPTION CONTRACT

A. General Principles of Restitution

The Supreme Court in *Ghirardo v. Antonioli* (1996) 14 Cal.4th 39 (*Ghirardo*), summarized the basic common law principles relevant to a claim for restitution. "Under the law of restitution, an individual may be required to make restitution if he is unjustly enriched at the expense of another. [Citation.] A person is enriched if he receives a benefit at another's expense. [Citation.] The term 'benefit' 'denotes any form of advantage.' [Citation.] Thus, a benefit is conferred not only when one adds to the property of another, but also when one saves the other from expense or loss. Even when a person has received a benefit from another, he is required to make restitution 'only if the circumstances of its receipt or retention are such that, as between the two persons, it is *unjust* for him to retain it.' [Citation.]" (*Id.* at p. 51; emphasis added.)

In *First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1663 (*First Nationwide*), the court discussed the criteria for determination of "unjust," noting that the

presence of mistake, fraud, coercion or request will often cause a receipt or retention of a benefit to be unjust. However, unjust receipt or retention may develop from other circumstances as well. "It must *ordinarily* appear that the benefits were conferred by mistake, fraud, coercion or request; otherwise, though there is enrichment, it is not unjust." (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 97, p. 126; *Nibbi Brothers, Inc. v. Home Federal Sav. & Loan Assn.* (1988) 205 Cal.App.3d 1415, 1422 (emphasis added).)

Enrichment is not unjust unless it is wrongfully received or passively received and unconscionable to retain. (66 Am.Jur.2d (2001) Restitution and Implied Contracts, § 10, pp. 607-608; Rest., Restitution, § 1, pp. 12-15; see also *Gardiner Solder Co. v. SupAlloy Corp., Inc.* (1991) 232 Cal.App.3d 1537, 1542.) In other words, some fault or request of the defendant is generally required in order for a claim of unjust enrichment to stand, but in the unusual alternative, restitution might be available, if the retention of the benefit passively received would be unconscionable. (66 Am.Jur.2d, *supra,* § 10, pp. 607-608.)

"'A person who without mistake, coercion or request has unconditionally conferred a benefit upon another is not entitled to restitution, except where the benefit was conferred under circumstances making such action necessary for the protection of the interests of the other or of third persons.' (Rest., Restitution, § 112.)" (*Stein v. Simpson* (1951) 37 Cal.2d 79, 86.) Determining whether enrichment is unjust, either because acquisition depended upon the defendant's fault or because retention would be unconscionable, involves a determination of policy. (*First Nationwide, supra*, 11 Cal.App.4th at p. 1663.)

In the real estate context, the requirement that the benefit be unjust in order to require restitution is also demonstrated in the general rule that voluntary improvements to land by a defaulting purchaser will not trigger a right to restitution. (*See* II Palmer, Law of Restitution (1978 ed.) § 6.6(a), p. 49.) This, in part, reflects the broad common law principle that recovery is objectionable when compelled for improvements which, though an enhancement to the value of the property, were undesired by the owner. (Woodward, The Law of Quasi Contracts (1913 ed.) § 188, p. 303.)

Further, with respect to mistake, a person who improves land that he mistakenly believes is his own is generally not entitled to restitution. (*See* Rest., Restitution, § 42, subd. (1), p. 167.) Here, Faucetta concedes that he did not mistakenly believe that the Red Planet property belonged to him at the time he made improvements. Even if Faucetta had so claimed, he would likely not be entitled to restitution given this rule.

Two main theories may support a claim for restitution: A quasi contract implied in fact, or an equitable obligation imposed by law. (*Kossian v. American Nat. Ins. Co.* (1967) 254 Cal.App.2d 647, 650.) Thus, the doctrine of unjust enrichment "can, in some instances, have validity without privity of relationship. The most prevalent implied-in-fact contract recognized under the doctrine of unjust enrichment is predicated upon a relationship between the parties from which the court infers an intent. However, the doctrine also recognizes an obligation imposed by law regardless of the intent of the parties. In these instances there need be no relationship that gives substance to an implied intent basic to the 'contract' concept, rather the obligation is imposed because

good conscience dictates that under the circumstances the person benefited should make reimbursement. [Citations.]" (*Ibid*.)

Here, the basis of Faucetta's claim is that this fact situation, involving a contractual relationship under an option contract during the period in which the work was performed, gives rise to a right to restitution under an implied in law contract theory. To analyze this claim, we next set out basic rules about option contracts.

B. The Option Contract and *Lesny* Authority[1]

An option contract is a unilateral contract, vesting limited rights in the optionee, usually the right to purchase property under stated terms and within a prescribed period of time. (1 Witkin, Summary of Cal. Law, *supra*, Contracts, § 175, p. 189.) If the option is exercised on the stated terms and within the fixed time, then a bilateral contract arises. (*Ibid*.) Here, the Option was such a limited, unilateral contract. In relevant part, it states: "Optionor hereby grants to Optionee the exclusive right to purchase the property at a price and under the terms and conditions set forth . . . ."

Generally by its very limited nature, an option contract does not create duties for the optionee with respect to improvement or maintenance of the property. An optionee does not, by virtue of his option, owe a duty to care for the property. The unilateral nature of the option contract binds the offeror instead. "[A]n option agreement is a contract distinct from the contract to which the option relates, since it does not bind the optionee to perform or enter into the contract upon the terms specified in the option."

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1 *Lesny Development Co. v. Kendall* (1985) 164 Cal.App.3d 1010 (*Lesny*).

(*Warner Bros. Pictures v. Brodel* (1948) 31 Cal.2d 766, 771-772.) "[A]n option contract involves on the part of the optionor a unilateral promise to perform the obligations of the contract to which the option relates. [Citations.]" (*Id*. at p. 773; *Landberg v. Landberg* (1972) 24 Cal.App.3d 742, 751.) In this case, the specific language of the instant Option is consistent with the principle of binding only the optionor. The Option does not require any such duties of Faucetta. However, Faucetta is contending that due to his contractual relationship with Red Planet under the option contract during the period in which the work was performed, under restitution rules and *Lesny, supra,* 164 Cal.App.3d 1010, he has a right to restitution under an implied in law contract theory.

In fact, both parties rely upon the authority of *Lesny*. In that case, involving a purchase agreement that fell through, the trial court denied specific performance but granted partial restitution to a plaintiff buyer of real property intended for development, where the escrow, prior to its cancellation, was made contingent upon, inter alia, the buyer obtaining approval of a tentative tract map. (*Lesny, supra*, 164 Cal.App.3d at p. 1015.) In their appeal, the sellers claimed that insufficient evidence supported the restitution award and that any award should have been based upon the reasonable value of the expenditures to the plaintiff, rather than the increased value to the property. (*Id.* at pp. 1014-1015.)

In *Lesny, supra*, 164 Cal.App.3d 1010, the appeals court agreed, conditionally reversing in part, concluding that any recovery by the buyer must be limited to the value of the expenditures made, and that work not contemplated by the contract or understanding between the parties must be excluded from the award of restitution. (*Id.* at

pp. 1021-1022.) "[S]ome of that work was done before the contract was signed and thus could hardly be deemed either to be for anyone's benefit but plaintiff's or to be part of the performance of that later-made contract. In other words, plaintiff took its chances on that. Second, even after the contract was signed, the nature of much of the work had nothing to do with tract map approval [the subject of the escrow contingency] . . . ." (*Id.* at p. 1023).

The court did, however, allow an award to the buyer of a portion of the restitution sought, for that work completed in order to carry out the escrow contingency. (*Lesny, supra,* 164 Cal.App.3d at p. 1025.) Restitution was not awarded for any other work, such as the work "performed before the contract was entered into" and work completed "for the benefit of plaintiff if it acquired the property and [that] was not directed at and did not result in plaintiff's" efforts to comply with the requirements under the terms of the escrow contingency. (*Id*. at p. 1023.) Moreover, in order to receive restitution, "plaintiff had the burden of proving its services were performed at such time and were of such nature as to be compensable . . . ." (*Id*. at p. 1024.)

C. Analysis of Restitution Claim

In light of this understanding of the Faucetta/Red Planet Option, we next discuss the application of unjust enrichment principles to the case of improvements made to real property by an optionee during the period of the option. We emphasize that there is no contention that any such improvements were made during the period escrow was pending on the Purchase Contract, before the cancellation of escrow. Faucetta argues that *Lesny, supra,* 164 Cal.App.3d 1010, applies here to authorize recovery to a prospective buyer

under an option contract because his Option on the Red Planet property is such an understanding between the parties that may form the basis for restitution, on an implied in law theory. We must address the issue of the extent of this contractual commitment between the parties at the option stage, as relating to the equitable analysis required by any claim for restitution. For example, such factors are considered as the respective behavior of the parties, any contractual relationship between them, the amount and type of benefit conferred, and when it was conferred.

We first disagree with Faucetta that he is entitled to relief simply because the benefit bestowed upon Red Planet was more than merely incidental. Restitution is not required where, when acting to protect or improve one's own interests, one confers an incidental benefit on another. (1 Witkin, Summary of Cal. Law, *supra,* Contracts, § 97, pp. 126-127; Rest., Restitution, § 106, p. 445.) The more important question is whether there were any implied contract or facts upon which it might reasonably be inferred that restitution is required, rather than the extent of the actual benefit conferred.

We also disagree with Red Planet's argument that its retention of any value of the conferred benefit must be justified on the basis that Faucetta's behavior was officious and voluntary. Generally, one who officiously confers a benefit is not entitled to restitution. (Rest., Restitution, § 2, p. 15.) As previously discussed, however, Faucetta's behavior was not entirely officious due to his status as an optionee. Faucetta enjoyed a prospective interest in the real property by virtue of the Option, and thus he was not acting entirely officiously. His conduct remains, however, voluntary, in light of the requirements of the Option. Volunteer efforts do not generally form the necessary basis for unjust

enrichment. (Rest., Restitution, §§ 112-117, pp. 461-491.) This concept was explored in *Major-Blakeney Corp. v. Jenkins* (1953) 121 Cal.App.2d 325 (*Major-Blakeney*), where the court addressed the issue of volunteer conduct in the context of alleged unjust enrichment to property planned for development. There, plaintiff, a property owner and builder, sought restitution from owners of neighboring property. Plaintiff alleged that, through its improvements of certain lots in a subdivision, the value of the defendants' abutting lots was unjustly enriched. (*Id*. at pp. 338-339.)

However, the appellate court decided in *Major-Blakeney* that no award of restitution to plaintiff would be proper, because "[t]he evidence and its reasonable inferences demonstrate that the improvements were undertaken as a part of plaintiff's own building program. . . . The expenditures made and obligations paid were done exclusively in furtherance of plaintiff's own interest and to discharge commitments for which it alone was responsible." (*Major-Blakeney, supra*, 121 Cal.App.2d at pp. 340-341.)

Similarly, Faucetta's conduct – pursuing and paying for rezoning and the subdivision map approval – was essentially voluntary and not attributable to contractual obligations, express or implied. The Option did not create a duty that he improve the land, and the only duty it created for Red Planet was the duty to sell the land to Faucetta for the specified consideration and according to specified terms, if Faucetta so requested within the effective period of the Option. (*Warner Bros. Pictures v. Brodel, supra*, 31 Cal.2d at p. 773, and cases cited; *Keller v. Pacific Turf Club* (1961) 192 Cal.App.2d 189, 196.) In the context of that limited contractual relationship, it would have been

unreasonable for Faucetta to improve the property and expect Red Planet to reimburse him. This is supported by the fact that after the Option was exercised and the parties entered into the separate Purchase Contract, the purchase agreement specifically provided that developments to the property would be permitted, but only at the sole expense of Faucetta.

Neither party alleges that Red Planet engaged in any unfair behavior, such as inducing mistake, coercion, or fraud, in order to purposefully acquire any benefit from Faucetta. The record does not support any such contention. Also, there is no allegation that Red Planet requested or directed Faucetta's efforts, and again the record would not support such an allegation. Thus, any claim for unjust enrichment upon this set of facts must depend upon a determination that Red Planet's passive receipt of the benefit may not be justly retained or that restitution is required for the protection of either Faucetta's legitimate interests or those of a third party. (Rest., Restitution, § 1, com. c, p. 13; § 112, p. 461; § 115, p. 481; *First Nationwide, supra*, 11 Cal.App.4th at p. 1663; *Stein v. Simpson, supra*, 37 Cal.2d at p. 86.)

Unlike the instant case, in *Lesny* there were escrow instructions indicating a purchase agreement existed during some of the work involved, and both seller and buyer paid a portion of the costs needed for the creation of the subdivision map for the property. (*Lesny, supra,* 164 Cal.App.3d at p. 1015.) It was determinative in *Lesny* that the escrow was made contingent upon the buyer's obtaining approval of the subdivision map. (*Id.* at p. 1023.) Here, the rezoning and subdivision map were obtained at the sole initiative and expense of Faucetta during the period of the Option. The record and reasonable

inferences drawn from it do not support a finding that Faucetta and Red Planet shared any understanding or made any agreement that Faucetta would be expending his efforts in expectation of compensation by Red Planet.

In order to recover restitution in the absence of mistake, fraud, coercion, or request, a plaintiff must demonstrate some understanding between the parties, such as an escrow contingency, as in *Lesny, supra,* 164 Cal.App.3d 1010, or other facts indicating that retention of the benefit would be unjust. (See *id*. at pp. 1015, 1023; Rest., Restitution, § 1, com. c, p. 13; § 112,p. 461; *Stein v. Simpson, supra,* 37 Cal.2d at p. 86.) Faucetta concedes this requirement, and requests this Court to hold that an option contract, on its own, is sufficient to create the requisite support for a claim for restitution. Given the unilateral nature of the option contract, we decline to do so. No such arrangement for property development or for mutually agreed-upon improvement is contemplated by the literal terms of the Faucetta Option or the Modification. Nor did the Purchase Contract require or contemplate this work. In any case, the unilateral nature of the option contract inheres only duties to the optionor, not the optionee. (*Warner Bros. Pictures v. Brodel, supra,* 31 Cal.2d at pp. 771-773; *Landberg v. Landberg, supra,* 24 Cal.App.3d at p. 751.)

Faucetta, as did plaintiffs in *Lesny, supra,* 164 Cal.App.3d 1010, took his chances in making the expenditures, separate from any agreement or relationship in the matter, in the hopes that he would be able to complete the transaction and, as the buyer, he would reap the resulting benefit. The record does not support a conclusion that Faucetta, in pursuing the rezoning and tentative subdivision map approval, was acting pursuant to or

to carry out any provision of the Option, the Modification or the Purchase Contract. Nor, as a matter of law, can Faucetta establish that he acted in accordance with any duty to maintain the land or to meet his obligations to Red Planet. To hold he was entitled to restitution would require an extension of the holding of *Lesny*, concerning the existence of a contractual obligation, which is not justified on this record. (*Id*. at pp. 1015, 1023.)

In light of all of the equitable factors to be considered, it is not unconscionable for Red Planet to retain any benefit received from Faucetta's efforts at rezoning and subdivision, because those improvements were voluntarily made by an optionee at a time when he was not required by an existing contract to do so. Moreover, the undisputed facts do not support the finding of a separate implied in law contract to support restitution. The extent of the parties' privity of relationship is not sufficient to invoke the doctrine of unjust enrichment. (*Kossian v. American Nat. Ins. Co., supra*, 254 Cal.App.2d at p. 650.) Based upon the whole record and the reasonable inferences to be drawn from it, Faucetta's voluntary efforts establish only his hope that the property would be transferred to him and that his efforts would be rewarded. Thus, he was not, as a matter of law, entitled to unjust enrichment restitution. The court properly granted summary judgment.[2]

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2 We need not address Red Planet's additional theory, raised for the first time on appeal, that essentially, as a matter of law, no real benefit was conferred at all, based upon a comparison of the purchase price negotiated by Faucetta and the final price of sale to the third party. Given our other conclusions, it is not necessary to resolve this. It is also unnecessary to address Red Planet's separate argument that all of Faucetta's claims were released in the language of the Purchase Contract.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.